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asset management group

May 27, 2014

Melissa D. Jurgens
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, DC 20581

Re: **Comments Regarding Review of Swap Data Recordkeeping and Reporting Requirements (RIN 3038—AE12)**

Dear Ms. Jurgens:

The Asset Management Group (the "**AMG**")[1] of the Securities Industry and Financial Markets Association ("**SIFMA**") appreciates the opportunity to respond to the Commodity Futures Trading Commission (the "**Commission**") in regards to its request for comments on Part 43 to its regulations,[2] which sets forth rules for the free, real-time public reporting of swap transaction data; Part 45,[3] which establishes swap data recordkeeping rules, as well as rules for the reporting of swap transaction data to a registered swap data repository ("**SDR**"); Part 46,[4] which sets forth swap data recordkeeping and reporting rules for pre-enactment swaps and transition swaps (collectively, "**historical swaps**"); and Part 49,[5] which governs SDR operations and Commission access to SDR data ("**SDR Rules**" and collectively, the "**Swap Reporting Rules**").

The Commodity Exchange Act ("**CEA**")[6] as amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act ("**Dodd-Frank**"),[7] sought to provide additional

[1] The AMG's members represent U.S. asset management firms whose combined assets under management exceed $30 trillion. The clients of AMG member firms include, among others, registered investment companies, ERISA plans and state and local government pension funds, many of whom invest in commodity futures, options, and swaps as part of their respective investment strategies.

[2] Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182 (Jan. 9, 2012).

[3] Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (Jan. 13, 2012).

[4] Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps, 77 FR 35200 (June 12, 2012)

[5] Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 FR 54538 (Sept. 1, 2011).

[6] 7 U.S.C. 1 *et seq.*

[7] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

information to market participants and prudential regulators about the swap markets by including provisions designed to enhance transparency, promote standardization, and reduce systemic risk.

We wish to highlight a few primary concerns with the Swap Reporting Rules as implemented to date. First, as a basic principle, asset managers should have access to swap trade information reported to an SDR by a dealer for clients on whose behalf a manager is acting. However, for reasons we describe in detail below, asset managers are not presently able to effectively access swap data on behalf of their clients. Furthermore, AMG believes that the Commission can greatly improve the quality of the swap data being reported by establishing uniform standards for swap data reporting. Among other things, uniform reporting standards would allow the Commission and other global financial regulators to easily compare data across multiple SDRs to develop a clear picture of the swap markets. We would also recommend that to the extent possible, such uniform reporting standards be developed in conjunction with those being implemented under other jurisdictions outside of the United States. Any efforts to harmonize the swap data reporting requirements on a cross-border basis will be tremendously beneficial to our members who transact in the swap markets on a global basis. Overall, we believe that by developing uniform reporting standards and ensuring that all authorized parties have access to swap data, SDRs can provide tremendous operational and regulatory efficiencies to the swap markets.

More specifically, as set forth in more detail below, AMG is requesting that the Commission work with each SDR to ensure that:

- asset managers have the ability, if they so choose, to review SDR reported trade information for trades executed on behalf of clients, or otherwise process such information in an automated fashion;
- client trade information is made available to asset managers in an easily accessible, easy to read format, without all the client's trades, including those placed by other managers, being exposed to non-authorized parties;
- trade information is not deemed verified merely by the passage of time;
- confidential client trade information is not provided to third parties, without the asset manager's or its client's consent; and
- consistent specifications and reporting fields are utilized to harmonize reporting requirements across jurisdictions and to ensure the interoperability of such information.

In order to better articulate our concerns and to assist the Commission in its stated goal of increasing oversight of swap markets and market participants through the use of reported swap data, we provide our responses to select questions (in sequential order) below.

Question 12. *Commission regulation 45.8 establishes a process for determining which counterparty to a swap shall be the reporting counterparty. Taking into account statutory requirements, including the reporting hierarchy in CEA section 4r(a)(3), what challenges arise upon the occurrence of a change in a reporting counterparty's status, such as a change in the*

counterparty's registration status? In such circumstances, what regulatory approach best promotes uninterrupted and accurate reporting to an SDR?

As the Commission notes, changes to a registered person's status, such as deregistration, would alter the reporting hierarchy and potentially lead to confusion with respect to responsibility between the parties for reporting information required to be provided with respect to any particular swap transaction.[8] This would in turn, impair the Commission's fundamental goal of maintaining complete information for use by financial regulators. As noted above, CEA section 4r ensures that at least one counterparty to a swap has an obligation to report data concerning that swap. The determination of this reporting counterparty depends on the status of the counterparties involved. For example, if only one counterparty is a swap dealer, the swap dealer is required to report the swap. Therefore, we believe that where a trade is executed between a swap dealer and a non-swap dealer, a subsequent change in a swap dealer's status should not affect that entity's swap reporting obligations. In all cases, where the swap dealer is the original reporting counterparty, unless the parties mutually reach an agreement to the contrary as to their respective responsibilities in respect of compliance with the Swap Reporting Rules, the original swap dealer reporting party should continue to be the reporting counterparty for a trade until such trade either terminates or is novated and such original reporting party is no longer a party to the trade.

Question 26. *Under the swap data reporting rules, are there any challenges presented by swaps for which the price, size, and/or other characteristics of the swap are determined by a hedging or agreed upon market observation period that may occur after the swap counterparties have agreed to the PET terms for a swap (including the pricing methodology)? If so, please describe those challenges.*

Post-priced swaps[9] should not be reportable until all PET terms are finalized because a valid swap transaction does not exist unless and until the PET terms are finalized. These swaps are distinguished from vanilla swap transactions because the actual price and size of the transaction, if the transaction is actually consummated, is not known at the time the parties have agreed to other swap terms. Instead, those primary economic terms can only be determined subsequently (typically later in the same day or on the next following day) once the applicable pricing data has become available and the swap dealer has completed its relevant hedging activity. Given that a swap may not always result following the transaction request by a client (for example, if a swap dealer hedge cannot be established), it seems unnecessary to report swap data at the inception of such a potential transaction. Instead, we believe that for purposes of the Swap Reporting Rules, a post-priced swap should only be considered to be "executed" for purposes of Part 43 and thus reportable when all its PET details are determined. This approach will also allow reporting parties to use their swap data reporting systems as currently configured

[8] We also note that such a change would affect numerous other areas of regulation including business conduct, clearing, and confirmation, portfolio reconciliation and portfolio compression requirements.

[9] Post-priced swaps are swaps for which the price, size and/or other characteristics of the transaction are determined based upon subsequent hedging activity or an agreed upon market observation period. Such swaps are broadly used across equity, fixed income and commodities asset classes.

to capture trade information only when price and size are known, rather than requiring new systems build-outs. Lastly, this approach will achieve the overall goal of regulatory and public transparency by requiring complete reporting with respect to transactions that are subject to final, binding economic terms, while not requiring potentially incomplete or confusing premature reporting of swaps that have not been fully priced or executed and, therefore, may not even be fully consummated.

We are in agreement with the detailed analysis on this point put forth in the letter from the International Swaps and Derivatives Association dated May 23, 2014.[10]

Question 33. *Part 45 requires the reporting of all swaps to SDRs. The Commission requests comment on how cleared swaps should be reported. Specifically:*

> *a. For swaps that are subject to the trade execution requirement in CEA section 2(h)(8), and ipso facto the clearing requirement, do commenters believe that the part 45 reporting requirements with respect to original swaps (alpha) should be modified or waived, given that the two new resulting swaps (beta and gamma) will also be reported?*
>
> *b. For swaps that are subject to the clearing requirement, but not the trade execution requirement, do commenters believe that the part 45 reporting requirements with respect to alpha swaps should be modified or waived, given that the beta and gamma swaps will also be reported?*
>
> *c. For swaps that are not subject to the clearing requirement, but are intended for clearing at the time of execution, do commenters believe that the part 45 reporting requirements with respect to alpha swaps should be modified or waived, given that the beta and gamma swaps will also be reported?*
>
> *d. Please discuss whether in each of the circumstances described above there actually is an alpha swap.*

AMG believes that accurate reporting of swaps information is vital to the marketplace and one of the hallmarks of Title VII of Dodd-Frank. We note that relevant data with respect to alpha swaps are captured under the real time reporting requirements of Part 43. However, under the current reporting construct, separately reporting alpha swaps to SDRs can result in misleading data being retained by SDRs. This is particularly concerning if alpha swaps and the subsequent beta-gamma swaps are reported to different SDRs, which could potentially result in the double-counting of swaps. The Commission should carefully consider its requirements and the practical constraints on reporting of alpha swaps under the Part 45 rules in order to ensure double counting does not occur, particularly in light of what is technologically feasible today.

[10] See ISDA Response to Review of Swap Data Recordkeeping and Reporting Requirements dated May 23, 2014, available at: http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1484

Question 42. *For cleared swaps, how can the netting and compression of swaps and positions by DCOs be most effectively represented?*

a. Please provide recommendations regarding the reporting of netting and compression, and describe any relevant differences in reporting of netting and of compression.

Methodologies, such as the use of identification codes, should be developed to fully identify and group swap transactions which are economically linked. This will enable both counterparties and the Commission to better monitor and track outstanding positions and risks and to properly reflect subsequent events in the life of swap trades. For example, where a party has engaged in a compression exercise which results in the termination of existing swaps and the replacement of these swaps with a new swap, it would be appropriate in our view to record this information as part of the swap history via industry standard identification codes. In this regard, AMG recommends that SDR data fields be modified to include USI suffixes. These suffixes could be used, for example, to designate swaps as part of a single netting set (e.g., USI_123-N1 and USI_123-N2). Similarly, these suffixes could be used to link components of a package trade (e.g., USI_789-P1 and USI_789-P2).

Question 46. *Commission regulation 49.11(b) requires SDRs to verify with both counterparties the accuracy of swaps data reported to an SDR pursuant to part 45. What specific, affirmative steps should SDRs take to verify the accuracy of data submitted? Please include in your response steps that SDRs should take regarding data submitted by reporting counterparties on behalf of non-reporting counterparties who are not participants or users of the SDR*

Question 49. *If an error or omission is discovered in the data reported to an SDR, what remedies and systems should be in place to correct the data? Within what time frame should a reporting entity be required to identify an error in previously reported data and submit corrected information to an SDR?*

1. <u>Improve Notification Process</u>. Commission regulation 49.11 requires an SDR to "notify" both counterparties of data submitted by a dealer to the SDR. This notification requirement goes beyond just notifying the non-reporting counterparty that a trade was submitted to the SDR. The regulation also imposes on the SDR the duty to provide both counterparties with the submitted data. However, SDRs are not currently sending to non-reporting counterparties submitted trade information or "notifying" the non-reporting counterparty that a trade has been submitted to the SDR. Instead, an asset manager (as a non-reporting counterparty) who wishes to have access to such trade information would have to independently determine on its own whether a trade has been submitted by a dealer to that particular SDR and, then, independently access the relevant SDR's systems in order to obtain access to the reported information.

We believe that registered SDRs should provide one daily automated verification report of all data to be provided to counterparties under Commission regulation 49.11.[11] This report should:

- Include only data required by Commission regulation 49.11 in the verification report (no extraneous or additional data to be included);
- Require PET data to be formatted to mimic the sequential order of the data fields required in Part 45, Appendix 1;[12]
- Include only final data in the verification report, without any corrections or duplicate entries of the same trade; and
- Link cleared trades with multiple USIs (e.g., package and compound trades) so that only one trade is included in the verification report.

2. <u>Information Should Not Be Deemed Verified</u>. Commission regulation 49.11(b)(1)(i),[13] which deals with swap creation data, sets forth no deadline for review of information after an SDR notifies the counterparties to a trade of the data that was submitted for a trade.[14] However, some SDRs may deem submitted swap creation data to be accurate after the passage of a prescribed period of time. We do not believe that deemed verification serves any purpose in ensuring the accuracy of the data being provided. Presumably, in promulgating Commission regulation 49.11(b)(1)(i),[15] the Commission intended for errors to be corrected by an SDR no matter when discovered. Accordingly, we do not believe that an SDR should be able to assume "verification" of swap creation data after the passage of time. As discussed above, we believe that SDRs should send data to non-reporting counterparties upon their request and in a manner that allows for automated processing of the data.

Question 64. *The Commission seeks input from market participants regarding the ownership of the transactional data resulting from a swap transaction. Is the swap transaction data from a particular swap transaction owned by the counterparties to the transaction?*

a. If cleared, should a DCO have preferential ownership or intellectual property rights to the data?

b. Should ownership or intellectual property rights change based on whether the particular swap transaction is executed on a SEF or DCM?

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[11] 17 C.F.R. §49.11

[12] 17 C.F.R. Part 45, Appendix 1.

[13] 17 C.F.R. §49.11(b)(1)(i)

[14] This is in contrast to Commission regulation 49.11(b)(2)(i), pertaining to swap continuation data, which expressly sets forth a deadline for review before an SDR can assume the accuracy of information. 17 C.F.R. §49.11(b)(2)(i)

[15] 17 C.F.R. §49.11(b)(1)(i)

c. What would be the basis for property rights in the data for each of these scenarios?

d. What ownership interests, if any, are held by third-party service providers?

e. What are the ownership interests of non-users/non-participants of an SDR whose information is reported to the SDR by a reporting counterparty or other reporting entity?

Dodd-Frank requires swap data reporting for real-time public dissemination and for confidential regulatory use. Real-time data reporting seeks price and volume transparency, while preserving counterparty anonymity. Confidential regulatory reporting includes not only real-time data, but also counterparty-specific information that helps the agencies conduct market oversight, enforce position limits, and track systemic risk.

AMG believes that because of this clear delineation in the statute, any swap transaction data that is not publicly reported is owned by only the counterparties to the transaction, regardless of whether the swap is cleared or where the swap is executed and reported and regardless of whether the swap data has been reported on a confidential basis to regulators. Absent a contractual agreement between the counterparties and a third party to license such data, swap data that is not subject to public reporting remains the property of the counterparties notwithstanding that such data is required to be sent to the SDR or to regulators.

Question 65. *Is commercialization of swap transaction data consistent with the regulatory objective of transparency?*

a. In what circumstances should an SDR be permitted to commercialize the data required to be reported to it?

b. Does commercialization of swap data increase potential data fragmentation?

c. Is commercialization of swap data reported to an SDR, DCM or SEF necessary for any such entity to be economically viable? If so, what restraints or controls should be imposed on such commercialization?

AMG believes that commercialization of swap data violates the intent and spirit of the Dodd-Frank Act, particularly the indemnification provisions contained in Sections 725, 728, and 763, as well as the public reporting requirements of Dodd-Frank, through which Congress has already determined what data should be made publicly available. AMG does not believe that commercialization of swap participants' transactions is necessary for the economic viability of an SDR, DCM or SEF, particularly given that such entities already impose significant fees for executing, clearing, and reporting swaps transactions. Accordingly, commercialization of swap data should not be permitted.

Question 66. *Does the regulatory reporting of a swap transaction to an SDR implicitly or explicitly provide ''consent'' to further distribution or use of swap transaction data for commercial purpose by the SDR?*

As discussed above, we do not believe that a SDR may properly disclose swap transaction data to a third party without the consent of the parties to the trade, even in cases where the reporting dealer has given its consent. An interpretation to the contrary would not comport to or serve the regulatory purposes of the confidentiality provisions in Dodd/Frank related regulations. The Commission should expressly clarify that the swap information relating to any trade cannot be disclosed to a third party without the consent of both parties to the trade.

Question 69. *To the extent not addressed by any of the questions above, please identify any challenges regarding: (i) The accurate reporting of swap transaction data; (ii) efficient access to swap transaction data; and (iii) effective analysis of swap transaction data. Please address each issue and challenge as it pertains to reporting entities, SDRs, and others. Please also discuss how such challenges can be resolved.*

> *b. What challenges do financial entities face as reporting counterparties and non-reporting counterparties under the swap data reporting rules? What enhancements or clarifications to the Commission's rules, if any, would help address these challenges?*

AMG believes that SDRs must provide the ability for asset managers to access data relating to trades placed by asset managers for their clients if they so desire. Many individual clients have multiple accounts and utilize more than one asset manager to manage their portfolios. However, SDRs do not presently separately account for the trading activity of such a client on the basis of the asset manager who has placed the trade for the client's behalf. As a result, an asset manager cannot access its client's SDR account to view the swap transactions the manager has placed for such client unless the client gives the manager access to all trades of the client, including those trades placed by other asset managers. As a consequence, an asset manager is effectively prevented from accessing and reconciling swap transaction data for the swap transactions placed on behalf of clients if so desired by the asset manager.

In order to more fully effectuate the goals of the Commission, SDRs must be able to track and provide trade information for a client on an asset manager by asset manager basis. We understand that dealers have not been reporting asset manager CICIs or otherwise identifying asset manager executing agent information because SDRs are not presently requiring this field. We believe that adding a field, to the extent it does not already exist for a particular swap type, for an asset manager as executing agent for swaps and mandating its use when reporting (or indicating "none" if applicable), will help rectify this problem. Such an approach would create a means to identify the asset manager for a particular trade and client and allow asset managers to access trade information on a client by client basis if they wish to review this information.[16]

While we understand the need to not be overly prescriptive given the evolving nature of swap data reporting, we nevertheless believe that to improve overall data quality the Commission should encourage SDRs to adopt rules that require certain fields, which are currently permitted to

[16] We understand that the execution agent field is already included as a data field for credit default swaps and that it is currently market practice to identify the executing agent in reporting such swaps. We do not believe that it would be unreasonable for the Commission to require its use across all swap types.

be left blank, to be completed, and to clarify that certain basic fields should be required to be uniformly submitted in either numerical or textual formats. [17]

In addition to addressing the above issues, we encourage the Commission to work with SDRs to provide operational efficiency for the reporting of trades which are simultaneously reported pursuant to the requirements of Dodd-Frank and the relevant swaps rules of other jurisdictions. Specifically, we believe that SDRs should strive for a streamlined process with standardization of specifications and reporting fields and interoperability across jurisdictions and SDRs. Any efforts to harmonize the swap data reporting requirements within and outside of the United States will be tremendously beneficial to our members who transact in the swap markets on a global basis.

* * *

[17] For example, the "*Trade Party 2 Name*" field will sometimes contain the name of a counterparty, while in other cases it will contain a counterparty's LEI. The SDR should restrict this data field to text submissions so that it always contains the name of the counterparty. Additionally, there are certain data fields that allow blank submissions; we believe that these fields should always be completed: *Trade Party LEI*, *Execution Agent Party*, *Effective Date*, *Notional Currency*, and *Initial Notional*.

The AMG thanks the Commission for the opportunity to comment on the Swap Reporting Rules. The AMG would welcome the opportunity to further discuss our comments with you. Should you have any questions, please do not hesitate to contact Matt Nevins of AMG at 212-313-1176 or Joel Telpner or Jonathan Ching of Jones Day at 212-326-3939.

Sincerely,

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cc: The Honorable Mark P. Wetjen, Acting Chairman
The Honorable Scott D. O'Malia, Commissioner
Vincent Mc Gonagle, Director, Division of Market Oversight
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